

## **REMARKS**

The present application includes claims 1-36. Claims 1-36 were rejected by the Examiner.

Claims 1-14 and 25-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Luzzi (U.S. Patent No. 6,141,699).

Claims 15-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Luzzi in view of Bessette (U.S. Patent No. 6,263,330).

The Applicant first turns to the rejection of claims 1-14 and 25-36 under 35 U.S.C. § 103(a) as unpatentable over Luzzi. Luzzi relates to monitoring of application availability and response time from the perspective of an end user in a distributed computing network (col. 1, lines 22-30). That is, Luzzi uses a client computer to monitor performance and availability of an application running on a server computer (Abstract, col. 1, lines 22-30).

Luzzi creates transaction records to report response time, availability, and real time application monitoring results (col. 1, lines 25-33). In Luzzi, transaction and monitoring data regarding execution of an application on a computer may be stored and reported (col. 1, lines 33-47). Transaction records relate to an application executing on the server, rather than to medical data.

In Luzzi, a client computer monitors activity on a server (col. 5, lines 11-16). A client may trigger an alert based on application performance or availability on a server

(col. 5, lines 11-16). A transaction record may be generated to document the alert and document availability of the server computer (col. 5, lines 39-42, col. 10, lines 29-57).

The system of Luzzi is not a central data archiving system with a centralized remote data store, but is rather a client-based application program monitor in a distributed computing environment (col. 5, lines 6-11, col. 8, lines 38-47). Luzzi is concerned with application performance in a distributed environment with multiple servers and multiple clients, rather than with storing data at a centralized remote data store (col. 9, lines 1-23).

Application monitoring and alerting (AMA) probe code on a client computer allows the client to record information (a transaction record) related to the performance of application program services on a server (col. 5, lines 24-42, col. 9, lines 47-58, Figure 2). A client computer may display graphs indicating availability and response times of application programs on a server (col. 6, lines 37-43). Transaction records may indicate whether an application was successfully executed at a server (col. 10, lines 21-57). Data may be used to determine whether a server meets defined performance criteria (col. 10, lines 21-28). Performance criteria included in a transaction record may include maximum allowable response time and a maximum number of failed successive attempts to access application program services (col. 11, lines 23-27). Luzzi specifies that the transaction records stored include limited data regarding application monitoring (col. 14, lines 25-33, col. 18, lines 42-47).

Thus, Luzzi does not teach or suggest medical data. Luzzi does not teach or suggest storing medical data. These limitations are recited in independent claims 1, 15, 25. For example, Luzzi does not store medical images, medical records, or other medical data. Rather, Luzzi stores transaction records including application availability, server

response, and execution time. It would not have been obvious to one of ordinary skill in the art to equate server transaction records with medical data and to modify the system of Luzzi to accommodate medical data. The system of Luzzi has no use for medical data.

Additionally, Luzzi does not teach or suggest a centralized remote data store for storing medical data. This limitation is recited in independent claims 1, 15, and 25. Rather, Luzzi uses a distributed computing network and stores data at one or more data repositories that may be local to the client computer. The data repositories of Luzzi store limited transaction statistics but not medical data.

Furthermore, Luzzi does not teach or suggest a status monitor for controlling transfer of medical data between a data source and a centralized remote data store. This limitation is recited in independent claims 1 and 15. Instead, the AMA probe of Luzzi is software code inserted with applications on a server to monitor execution of applications on a server and to generate limited statistics regarding execution and availability. The probe does not control transfer of data between a data source and a centralized remote data store.

Thus, the Applicant respectfully submits that the claims of the present application are allowable.

Additionally, if the Examiner is attempting to take Official Notice of equivalence of medical data and transaction records on pages 3 and 7 of the Office Action, the Applicant respectfully traverses the taking of Official Notice. Timing and access statistics for an application on a server are different from medical data for a patient (for example, medical records, images, examination data). Limited statistics corresponding to

availability and access times are different from the variety of medical data in the present application.

There is no mention in Luzzi of medical applications or medical data. Nothing in Luzzi relates its monitoring of server and application access to a medical context. Additionally, neither Besette nor any other prior art suggests that application response and alert transaction records are equivalent to medical data. Rather, Luzzi is solely focused on availability and timing data to chart server performance. The probe code added with applications on a server is neither designed for nor capable of recording and transmitting medical data (col. 14, lines 25-33). Transaction records are internal system measures. The information and structure of a Luzzi transaction record would not be adequate in a medical context.

No reference is known that equates the transaction records of Luzzi with medical data, and no one of ordinary skill in the art would equate the transaction records of Luzzi with medical data. No such reference was discovered in the Examiner's search. Thus, the Applicant respectfully submits that, pursuant to MPEP § 2144.03, the Examiner must cite a reference or submit an affidavit to support the assertion of Official Notice.

The Applicant next turns to the rejection of claims 15-24 under 35 U.S.C. § 103(a) as being unpatentable over Luzzi in view of Besette. As described above, Luzzi uses a client computer to monitor availability and response time of applications running on a server in a distributed system. Besette stores medical records in databases on servers (Abstract, col. 3, lines 57-59). The databases are not centralized and are instead distributed among multiple remote sites (col. 3, lines 61-65, col. 4, lines 35-39, col. 10,

lines 35-48). In fact, a goal of Bessette is to share the data among multiple computers to avoid massive amounts of data stored in one location (Abstract, col. 3, lines 5-26).

Furthermore, there is no centralized relationship or indexing of the data. Bessette asserts that a centralized data store would be undesirable (col. 3, lines 5-26).

The medical records of Bessette consist of identification information for a patient and pointers or links to other remotely stored files (Abstract, col. 4, lines 10-17). The identification information is limited and static (col. 4, lines 13-17). The medical record may include a SmartCard identification card, retinal scan, or other identifier (col. 7, lines 29-51). The identification information in the medical record may be used to identify a patient (col. 7, lines 29-30 and lines 52-56). Then, pointers in the record allow a doctor to locate information dispersed in a plurality of locations (col. 7, lines 52-65). The database of Bessette serves as a means to facilitate queries for information in multiple disparate locations rather than a centralized remote data store. As Bessette states, an objective of Bessette is to distribute the bulk of the data away from a central database (col. 4, lines 35-38).

Thus, the medical records of Bessette are different from the medical data of the present application. Additionally, Bessette does not teach or suggest the centralized remote data store of the present application. The Applicant respectfully submits that the claims of the present application are allowable over Bessette.

One of ordinary skill in the art would not be motivated to combine Luzzi with Bessette. Even assuming that Luzzi and Bessette were combined, the combination would not function for its intended purpose. Medical doctors would not care to retrieve client-server transaction data when examining a patient. Additionally, the limited data probes

of Luzzi would not function to gather the medical records of Besette. Probe code inserted with applications on a server would not function to gather medical records (col. 14, lines 25-33). Furthermore, the query engine of Besette would not facilitate the statistics generation and AMA probe data extraction of Luzzi.

Neither Besette nor Luzzi, taken alone or in combination, teaches or suggests a centralized remote data store. This limitation is recited in independent claims 1, 15, and 25. In fact, both Luzzi and Besette teach decentralized data storage dispersed among multiple servers. Additionally, neither Luzzi nor Besette teach or suggest a status monitor for controlling transfer of medical data between a data source and a centralized remote data store. This limitation is recited in independent claims 1 and 15.

Therefore, the Applicant respectfully submits that the claims of the present application are allowable over the prior art.

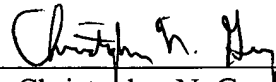
**CONCLUSION**

If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited and encouraged to contact the Applicants at the number below.

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of GEMS-IT, Account No. 502401.

Respectfully submitted,

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